IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7165 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMAD HAYAZ @ AIYAZ NISHAR MOHAMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7165 of 2004

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions

of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 12-4-2004 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard Ms.Banna Dutta for Mr.A.R.Shaikh, learned counsel for the petitioner and learned AGP for the State. It is submitted by the learned counsel for the petitioner that the petitioner has been branded as bootlegger based on single prohibition case registered with DCB Police Station, Surat being C.R.No.5210 of 2004 on 13-3-2004 and impugned order of detention was passed on 12-4-2004 while the detenu was actually detained on 15-4-2004. It is submitted that the petitioner has sent a written representation to the detaining authority through advocate on 5-6-2004 and it was received by the authority on 8-6-2004. However, said representation was decided on 15-6-2004 and hence, there is a delay in deciding the representation. In this connection, learned counsel for the petitioner has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the representation dated 5-6-2004 sent to the detaining authority was rejected on 15-6-2004. Hence, there is a delay in deciding the representation. However, no satisfactory explanation has been putforward by the authority for the delay caused in deciding and communicating the decision to the detenu. Hence, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points.

5. The petition is allowed. The impugned order of detention dated 12-4-2004 passed against the detenu Mohamad Hayaz @ Aiyaz Nishar Mohamad Shaikh is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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